

1973 REPORT

LEGISLATIVE RESEARCH COMMISSION

OIL POLLUTION CONTROL

TO THE MEMBERS OF THE GENERAL ASSEMBLY

The Legislative Research Commission herewith reports to the 1973 General Assembly its findings and recommendations concerning oil pollution control. This report is made pursuant to Senate Resolution 961, adopted by the 1971 General Assembly, which directed the Commission to study "the need for legislation concerning prevention and abatement of oil pollution, including measures for prevention or cleanup of oil spills," and to report its findings and recommendations to the 1973 General Assembly.

This report was initiated by the Committee on Environmental Studies of the Legislative Research Commission to which the Commission assigned its study on oil pollution control. The Committee on Environmental Studies consisted of:

Sen. William W. Staton, Co-Chm.	Sen. Lennox P. McLendon, Jr.
Rep. William R. Roberson, Jr., Co-Chm.	Sen. William D. Mills
Rep. P. C. Collins, Jr.	Sen. Marshall A. Rauch
Rep. Jack Gardner	Sen. Norris C. Reed, Jr.
Rep. W. S. Harris, Jr.	Rep. Carl M. Smith
Sen. Hamilton C. Horton, Jr.	Rep. Charles H. Taylor
Rep. W. Craig Lawing	Sen. Stewart B. Warren, Jr.

The Subcommittee to which this study was specifically referred consisted of Senator Lennox P. McLendon, Jr., Chairman, Senator Norris C. Reed, Jr., Representative Jack Gardner, and three public members--Mrs. D. G. Sharp, Dr. John Lyman, and Mr. Richard Dorney.

Respectfully,

Philip P. Godwin, Speaker

Senator Gordon Allen

Co-Chairmen, Legislative Research Commission

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INTRODUCTION

Previous Legislative Efforts

*The specter of a major oil spill off our coastline or in our harbor waters is not a pleasant thought. I propose strong measures to attack this problem.**

With these words, Governor Robert Scott introduced his proposals to the 1971 General Assembly for state legislation concerning oil pollution. "Strong measures" he did propose, including cleanup procedures for oil spills; required permits for major oil terminal facilities and pipelines; and triggering and strengthening of the existing Oil and Gas Conservation Law.

One segment of this program was enacted into law, the amendments to the Oil and Gas Conservation Law of 1945. S.L. 1971, Ch. 813. As a result, this dormant statutory scheme for regulation of oil and gas wells was activated. (Prior to 1971 the law required that oil and gas be discovered "in commercial quantities" before the regulations became effective. The 1971 amendments eliminated this requirement.) In addition, statutory language was added to make plain that regulations for the purpose of environmental protection could be included in these oil and gas well controls. Thus, North Carolina now has a legal framework for protecting the surrounding environment if oil and gas wells are successfully drilled within the State.

Governor Scott's other proposals--for oil spill cleanup procedures and permit controls over terminal facilities and pipelines--were not adopted in 1971. A series of hearings on these proposals held in May 1971 by the Senate Committee on Conservation and Development raised more questions than could be

* Governor Robert Scott, Environmental Message to the General Assembly. April 8, 1971.

answered in the late stages of a legislative session. At that time cases were pending in the courts challenging the constitutionality of oil spill control legislation enacted by Florida and other states as an invasion of federal authority. Because of the resulting uncertainty, the Senate Committee recommended no legislation on this subject and none was enacted. Rather, the Committee urged that the matter be studied in depth by the Legislative Research Commission between the 1971 and 1973 sessions.

The Work of the Subcommittee

The Senate C & D Committee's recommendation for in-depth study was reflected in Senate Resolution 961, adopted by the 1971 Assembly. This resolution directed the Legislative Research Commission to study and report back to the 1973 Assembly on the need for legislation concerning the "prevention and abatement of oil pollution, including measures for prevention or cleanup of oil spills."

Acting under Senate Resolution 961 we appointed a Committee on Environmental Studies to study this and related environmental problems. The Environmental Studies Committee in turn appointed a Subcommittee on Oil Pollution Control to consider this subject. The Subcommittee included three legislator members--Senator Lennox P. McLendon, Jr., (Chairman); Senator Norris C. Reed, Jr.; and Representative Jack Gardner. It also included three public members reflecting the conservation, business and professional interests most directly concerned with the subject--conservationist Mrs. D. G. Sharp, Environmental Quality Chairman of the League of Women Voters of North Carolina; marine science specialist Dr. John Lyman of the University of North Carolina at Chapel Hill; and Mr. Richard Dorney of the Humble Oil Company.

The Subcommittee has recommended and the full Committee has approved proposed legislation to provide a program for the control of oil pollution. We have adopted the findings and recommendations of the Subcommittee. A bill that embodies our recommendations is included in this report as Appendix C. Following the bill, in Appendix D, is a section-by-section analysis.

The Subcommittee benefited very much from testimony presented at its public hearings. Special appreciation is extended to three federal agencies--the Environmental Protection Agency, the U. S. Coast Guard and the Department of Transportation--for the valuable testimony of experts from their out-of-state offices.

General staff assistance was furnished to the Subcommittee by the Institute of Government. Because legal uncertainties figured so largely in the rejection of the 1971 oil spill control bill, a special effort was made to clarify these issues. Three lengthy memoranda were prepared for the Subcommittee analyzing federal oil pollution legislation, oil pollution control statutes of other states, and a federal district court decision concerning the constitutionality of the Florida oil pollution statute.

Our findings from the work of the Subcommittee, including its hearings and the staff papers produced for it, are set forth in the following section.

FINDINGS

(1) New legislation is needed in North Carolina to lay the basis for a comprehensive state program of oil spill control and surveillance over the siting, construction and operation of major facilities for transporting, storing, processing and refining oil.

Few events have more dramatized the problem of water pollution than the devastating major oil spills of recent years off the coasts of California, England and other maritime lands. The breakup of the tanker *Torrey Canyon* in 1967 spewed 30,000,000 gallons of crude oil into the ocean off the coast of England, polluting 120 miles of English shoreline. 3,000,000 gallons of oil were dumped into San Juan Harbor in 1968 when the tanker *Ocean Eagle* ran aground a shoal. And the "blowout" of offshore oil wells into the Santa Barbara Channel spilled oil at the estimated rate of 500 to 20,000 barrels (20,000 to 850,000 tons) per day into an area of 400 square miles of water, polluting ten miles of beaches. The notoriety of these incidents makes it unnecessary to belabor the details of damage to wildlife, coastal areas and other environmental resources.

Testimony before the LRC Subcommittee on Oil Pollution points up North Carolina's exposure to the risk of major oil spills in convincing terms. According to U. S. Coast Guard figures 1,400,000,000 barrels of oil per year go north past Cape Hatteras, distributed approximately as follows:

Gasoline	250,000,000 barrels
Jet fuel	65,000,000 barrels
Domestic heating fuel	200,000,000 barrels
Residual fuel	565,000,000 barrels
Crude oil	235,000,000 barrels
Miscellaneous	85,000,000 barrels

(7.5 barrels equal about 1 ton.)

The record of North Carolina's recent experience with coastal and inland oil spills is far from reassuring. Testimony by a spokesman for the Southeastern Regional Office of the U. S. Environmental Protection Agency (EPA)

made this quite plain. During the first three months of 1972, North Carolina--though not an oil producing state--experienced one-third of the significant reported spills in the 8-state Southeastern Region of EPA. While praising the cooperation of our state pollution control officials, the Chief of EPA's Environmental Emergency Branch for the Southeast expressed understandable concern at these statistics.

Congress has responded to the threat of oil spills by enacting far-reaching oil pollution controls and spill cleanup requirements in the Water Quality Improvement Act of 1970. At least 13 coastal states have adopted significant oil pollution control statutes comparable to the legislation proposed for North Carolina in 1971.

Spokesmen from the Washington as well as the regional offices of the leading federal oil pollution control agencies responded generously to the request of our Subcommittee to testify at its hearings. The two federal agencies responsible, respectively, for coastal and inland oil pollution control (the Coast Guard and EPA) sent their leading oil pollution control experts to testify. Both recommended the adoption of state oil spill control laws. Their recommendations were echoed by the pollution control experts of the N. C. Board of Water and Air Resources. None of these experts felt that our general water pollution control laws can alone answer to the need for a solid legal basis for oil pollution control programs.

The evidence received by our Subcommittee strongly emphasizes, both our good fortune at escaping serious damage from oil pollution so far, and our increasing need for a comprehensive state oil pollution control statute.

(2) Legal obstacles to State oil pollution control legislation are not, in our judgment, insurmountable.

(a) Legal studies by the Subcommittee.--The LRC Subcommittee on Oil Pollution was charged among other things to explore in depth the legal issues that had blocked legislative action on oil pollution in 1971. At an early stage of its work, the Subcommittee decided to make whatever inquiries were needed to resolve these issues to its satisfaction. Pursuant to this decision the Institute of Government was asked to make the necessary studies. The Institute's research was reflected in a series of reports to the Subcommittee, as follows:

- * An Introductory Report to the Subcommittee on Oil Pollution (March 1972. 7 pages. A general review of the events leading up to the resolution directing the LRC study and of federal legislation on oil pollution.)
- * A Memorandum on the Decision Concerning Constitutionality of Florida Oil Pollution Statute by 3-Judge Federal District Court. (April 20, 1972. 8 pages. A legal analysis of a decision by a 3-Judge Federal District Court that invalidated Florida's oil spill control statute in November, 1971, as an invasion of federal maritime jurisdiction--after the adjournment of the 1971 N. C. General Assembly.)
- * A Memorandum Concerning Federal Oil Pollution Legislation. (April 24, 1972. 20 pages. A detailed review of federal oil pollution control legislation. This memorandum emphasized the Congressional response to the recent oil spill disasters in the Water Quality Improvement Act of 1970.)
- * A Memorandum Concerning State Oil Pollution Control Statutes. (June 5, 1972. 38 pages. A comprehensive summary of recent legislation enacted by 13 coastal states concerning oil pollution control. The memorandum reviews litigation interpreting and testing these statutes, as well as the statutes themselves.)

With these studies in hand, the Subcommittee believed that it had secured the information and evaluation needed to get on with its job.

(b) Pertinent legal issues.--When North Carolina's oil spill control bill was under legislative consideration, a major source of legal uncertainty was a pending lawsuit challenging the constitutionality of Florida's 1970 oil pollution statute. This Florida statute resembled North Carolina's 1971 bill in a number of ways. It provided for state licensing of oil terminal facilities; for a blanket prohibition against discharges of oil into Florida's waters except in accord with a state-issued permit; for cleanup and restoration procedures; and for fees and penalties comparable to those that were proposed for North Carolina.

In November, 1971 a partial answer was given to the questions raised by the Florida test case, when a 3-Judge Federal District Court held the Florida statute unconstitutional. American Waterways Operators et al. v. Askew et al., 335 F. Supp. 1241 (D. C. Fla., 1971). The Florida statute was attacked on several grounds--as an invasion of exclusive federal maritime jurisdiction; as an invalid regulation of foreign and interstate commerce; and on due process and equal protection grounds. The court disposed of the case solely on the maritime jurisdiction issue, and did not consider the remaining questions. In finding the Florida statute unconstitutional on the ground of conflict with federal maritime law, the court rejected the plaintiffs' broad contention that a state cannot legislate at all in the admiralty field, holding that states are restricted only from legislating in a way that conflicts with federal maritime law. The court found the Florida statute invalid on the ground that it conflicted with federal maritime law (a mixture of statutes and common law), as most recently modified by the Water Quality Improvement Act of 1970.

The Water Quality Improvement Act (WQIA) prohibits the discharge, intentional or unintentional, of oil in harmful quantities into or upon the navigable waters of the United States. This prohibition applies to vessels, onshore facilities and offshore facilities. There are civil and criminal penalties for violations. In addition, the United States may recover from the discharger its expenses in cleaning up the spill, up to limits of \$14,000,000 or \$100 per gross ton of vessel (in the case of vessels) or \$8,000,000 (in the case of offshore or onshore facilities). These limits are likely to be much higher than under traditional maritime law. The only available defenses to liability under WQIA are an act of God, act of war, negligence by the federal or state governments, or an act or omission of a third party. Under traditional maritime law there may be no recovery without proof of negligence or unseaworthiness.

In an effort to ensure a maximum recovery for the largest possible number of items, the Florida statute attempted to do two things that the 3-Judge District Court found to be in conflict with federal law. First, it failed to allow the discharger the four defenses set forth in WQIA as a matter of right, but identified them only as privileges within the discretion of the State agency. Second, it sought to permit the State to recover for items in addition to those specified in WQIA, specifically for costs of restoring damaged public or private property (in addition to the cleanup costs allowed by WQIA).

The decision of the 3-Judge Court has been appealed and certiorari has been granted by the Supreme Court. North Carolina and other coastal states have joined Florida in this appeal, and they have hopes of overturning the decision against the Florida statute.

It has been suggested that we should await the final decision of the Supreme Court before considering the enactment of state oil spill control legislation. The Supreme Court may dispose of the case this year or at least before the end of the 1973 legislative session in North Carolina. Thus, the argument goes, we should withhold any further legislative recommendations pending the Supreme Court decision.

If we believed that effective state legislation could not be enacted unless the 3-Judge decision were reversed, we might accept this argument. It is our belief, however, that useful state controls supplementing federal law can be enacted without contravening the limits identified in the 3-Judge decision. Essentially, we believe that this can be accomplished by preserving the federal defenses and limiting the recovery to items allowable under the federal law. Neither of these limitations, in our judgment, is unacceptable.

Another, but lesser, legal question that might be raised concerning the 1971 North Carolina bill involves its reporting requirements. As drafted, the bill requires persons responsible for oil spills to report the spills to State authority or suffer criminal and civil penalties. Because the bill also absolutely prohibits discharges with few exceptions, it is quite likely that the discharger will be required by the reporting provision to report his own violation. The U. S. Supreme Court has recently held that reporting requirements may be unconstitutional under the self-incrimination clause in these circumstances.* We believe that the risk of unconstitutionality in the reporting provision of the 1971 North Carolina bill can be avoided by eliminating the criminal sanction for non-reporting, leaving only the civil penalty, which should serve as a sufficient incentive for reporting.

* California v. Byers, 402 U.S. 424 (1971).

In summary, it is our judgment that there are no serious legal obstacles to enactment and enforcement of an effective State oil pollution control statute.

(3) The elements of a sound State oil pollution control law include:

(a) Those responsible for oil spills should be held strictly and fully accountable for the consequences, unless the cause was truly beyond their control.--In today's business world, economies of scale have made their imprint on every phase of the expanding oil industry. Oil is processed in large refineries, stored in correspondingly large storage areas, and transported in increasingly large tankers and pipelines. The network of oil facilities stretches over ever larger reaches of land and sea. These facilities enable the oil industry to economically serve more people in larger quantities. But the other side of the coin is the growing capacity of the oil industry to inflict spectacular damage upon others and on the environment when things go wrong.

Time was when society could perhaps afford the luxury of holding the oil industry responsible only for injuries to others clearly resulting from its negligence. The growing frequency and severity of oil spills, though, makes it essential to tighten the standard of care expected of this industry.

Along with a heightened standard of care should go sanctions for oil spills sufficient to encourage the industry to take every reasonable precaution against future spills. Hopefully, strict liability together with tougher sanctions and remedies will strengthen the motivation of the industry enough to control the mounting and intolerable toll of oil spills.

The need for state programs to supplement federal programs in these respects is supported by federal and state officials alike.

(b) Funds should be reliably available on call for the State to take necessary cleanup and control measures promptly when the need arises.--The usual method of financing state activities via appropriations alone is not likely to be equal to the task of enabling the State to respond fully and immediately to the need for control and cleanup of oil spills. A revolving fund initiated by appropriations and maintained by fees, penalties and other recoveries under an oil pollution control program is required to meet this need.

(c) In order to establish a stable and effective oil pollution control program in the face of adverse decisions on the validity of some state oil pollution statutes, the legal risks should be minimized in every way consistent with a sound state law.--The Florida 3-Judge decision illustrates the legal hazards that state oil pollution control legislation may face. In light of this decision it makes sense to allow all of the defenses permitted by WQIA and to limit the permissible items of recovery to those authorized by WQIA. The 1971 North Carolina bill, with minor modifications, passes these tests.

It also makes sense to take other reasonable precautions in drafting an oil pollution bill, such as avoiding the self-incrimination problems identified in California v. Byers. Another reasonable precaution is the inclusion of a detailed special severability clause that gives the courts more than the usual guidance in approaching the problem of severability.

In one respect we believe it may be worthwhile to test the allowable reach of state regulation. The 1971 North Carolina bill contained a section imposing liability to the State for damage to public resources caused by oil spills. We believe that the interest of the State in protecting its waters,

lands, flora and fauna from damaging oil spills is sufficient to justify this provision. We would suggest, however, that this matter might appropriately be given further consideration.

(d) A permit system should be established to help control the risk of oil pollution from facilities for refining, processing, and storing oil.-- Through such a permit system, guidance could be given in the selection of sites, the design and construction of the facilities, and the proper maintenance of facilities once installed. Such a mechanism will promote preventive action to avoid oil pollution problems before they arise.

We recommend one change in the provisions of the 1971 bill concerning permits: deletion of its permit requirement for oil pipelines. Pipelines should be subject to the oil spill control requirements of Part 2 of the bill, in the same manner as other facilities, but we do not believe they should be covered by the permit requirements of Part 3. Unlike refineries and storage areas, pipelines are now subject to federal permit requirements that control their design, construction, and operation. To require a State permit, as well as a federal permit, would be superfluous and quite possibly illegal under the supremacy clause of the United States Constitution.

(e) The oil pollution controls that are adopted should apply in inland areas as well as coastal areas.--The most publicized and spectacular recent oil pollution incidents have indeed occurred in coastal areas. But the record of recent oil spills in North Carolina shows a fine impartiality in their choice of inland or coastal sites. The protection of an oil pollution control law is plainly needed on a statewide basis.

(4) The Commission is not prepared at this time to offer further recommendations.

Testimony before the Oil Pollution Subcommittee identified other needs in addition to oil spill control and oil terminal facility licensing. Specifically, the problem of waste oil disposal is an unsolved one that may be amenable to legislative control. Legislation concerning waste oil disposal has apparently been successfully administered for several years, at least, in Germany. However, time does not allow us to consider this subject, or others not previously discussed, with sufficient care to warrant further legislative recommendations.

RECOMMENDATIONS

The Commission recommends the enactment of the bill set forth in Appendix C of this Report. ("A bill to be entitled an Act to provide for the protection and conservation of the natural resources of the State of North Carolina through regulation and control of sources of oil pollution.")

The recommended legislation would provide for a program of oil spill control and of regulation over the location, construction and operation of major oil facilities, such as refineries, and storage sites. It carries forward the substance of the 1971 oil spill control bill, with revisions designed to minimize exposure to legal attack.

The threat of gross damage from oil spills knows no territorial bounds. North Carolina has already experienced significant spills of moderate size, both inland and coastal. With our extended coastline and the vast tonnage of oil shipped along our coast, we are more vulnerable than most states to major spills. Federal and state oil pollution experts alike join in recommending that we enact legislation along the lines set forth in Appendix C.

The recommended legislation will close an important and potentially serious gap in our pollution control armor. Enactment of this legislation before major damage is caused by oil spills would reflect wise legislative planning and statesmanship.

APPENDIX A

SENATE RESOLUTION 961

GENERAL ASSEMBLY OF NORTH CAROLINA

1971 SESSION

SENATE RESOLUTION 961



Sponsors:

Senators Allen and Patterson.

Referred to: Calendar Committee.

July 12

1 A RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO
2 STUDY THE NEED FOR LEGISLATION CONCERNING CERTAIN ENVIRONMENTAL
3 PROBLEMS.

4 Be it resolved by the Senate:

5 Section 1. The Legislative Research Commission is
6 hereby authorized and directed to study the need for legislation
7 concerning the following subjects:

8 (1) Regulation of septic tank wastes;

9 (2) Prevention and abatement of oil pollution,
10 including measures for prevention or cleanup of oil
11 spills;

12 (3) Regulation and management of animal and poultry
13 wastes;

14 (4) Prevention and abatement of pollution of the
15 State's waters by nutrient waste, particularly
16 compounds of phosphorus and nitrogen;

17 (5) Prevention and abatement of pollution of the
18 State's waters by sedimentation and siltation,
19 particularly that occurring from runoff of surface
20 waters and from erosion;

(6) Recovery by agencies providing water services of damages from persons polluting the water supply;

(7) The reporting of industrial wastes and other wastes containing toxic materials to public waste disposal systems.

(8) Such other environmental protection or natural resource management subjects not specifically assigned by law or resolution to another Legislative Study Commission as the Commission may deem appropriate.

Sec. 2. With respect to the subjects enumerated in Section 1, the Commission shall examine and evaluate previous relevant experience in North Carolina, legislation and proposals in other jurisdictions, and the experience of other jurisdictions in applying such legislation. In connection with the studies directed by Section 1, the Commission, where desirable and feasible in its judgment, may include non-legislator members on the study subcommittees assigned these studies.

Sec. 3. The Commission shall report its findings and recommendations to the 1973 General Assembly.

Sec. 4. This resolution shall become effective upon its adoption.

APPENDIX B

LIST OF WITNESSES WHO APPEARED OR WERE INVITED TO APPEAR
AT HEARINGS OF OIL POLLUTION CONTROL SUBCOMMITTEE

LEGISLATIVE RESEARCH COMMISSION
ENVIRONMENTAL STUDIES COMMITTEE
OIL POLLUTION CONTROL SUBCOMMITTEE

Witnesses Who Appeared at Subcommittee Hearings

Dr. Kenneth Biglane, Chief, Oil and Hazardous Materials Division,
Environmental Protection Agency

William Black, Federal Railroad Administration,
United States Department of Transportation

Darwin Coburn
Office of Water and Air Resources

Dr. Arthur Cooper, Assistant Director,
Department of Natural and Economic Resources

Ensign Roger Hansen, United States Coast Guard,
Assistant Captain of the Port of Wilmington

Earle C. Hubbard
Office of Water and Air Resources

Henry T. Rosser, Assistant Attorney General

A. J. Smith, Environmental Protection Agency,
Atlanta Regional Office

• Captain Sidney Wallace, Environmental Officer,
United States Coast Guard

APPENDIX C

PROPOSED BILL TO IMPLEMENT RECOMMENDATIONS

The proposed bill is modeled on House Bill 685 introduced into the 1971 Session of the General Assembly.

GENERAL ASSEMBLY OF NORTH CAROLINA

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE PROTECTION AND CONSERVATION OF THE
3 NATURAL RESOURCES OF THE STATE OF NORTH CAROLINA THROUGH
4 REGULATION AND CONTROL OF SOURCES OF OIL POLLUTION.

5 The General Assembly of North Carolina enacts :

6 Section 1. G.S. Chapter 143 is hereby amended by adding
7 thereto a new article, to be numbered Article 53, and to read as
8 follows:

9 "Article 53.

10 "Oil Pollution Control.

11 "Part 1.

12 "General Provisions.

13 "§ 143-471. Title.--This Article shall be known and may be
14 cited as the 'Oil Pollution Control Act of 1973.'

15 "§ 143-472. Purpose.--It is the purpose of this Article to
16 promote the health, safety, and welfare of the citizens of this
17 State by protecting the land and the waters over which this State
18 has jurisdiction from pollution by oil, oil products and oil by-
19 products. It is not the intention of this Article to exercise
jurisdiction over any matter as to which the United States Government
has exclusive jurisdiction, nor in any wise contrary to any governing
provision of federal law, and no provision of this Article shall be
so construed. The General Assembly further declares that it is the
intent of this Article to support and complement applicable provisions
of the Federal Water Quality Improvement Act of 1970 (Public Law
91-224), as amended, and the National Contingency Plan for Removal of
Oil adopted pursuant thereto.

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3 "§ 143-473. Definitions.--As used in this Article, unless the
4 context otherwise requires:

5 (1) 'Barrel' shall mean 42 U. S. gallons at 60 degrees
6 Fahrenheit.

7 (2) 'Board' shall mean the North Carolina Board of Water and
8 Air Resources.

9 (3) 'Office' shall mean the North Carolina Office of
10 Water and Air Resources.

11 (4) 'Director' shall mean the North Carolina Director of
12 Water and Air Resources.

13 (5) 'Discharge' shall mean, but shall not be limited to, any
14 emission, spillage, leakage, pumping, pouring, emptying, or
15 dumping of oil upon the lands of this State or into the waters
16 over which it has jurisdiction or the placement of oil in such
17 proximity to the waters of the State that drainage therefrom may
18 reach the water, but shall not include discharges in amounts determined
19 by the Board not to be harmful to the public health or welfare
20 (including, but not limited to fish, shellfish, wildlife and public
21 and private property, shorelines, and beaches).

22 (6) 'Having control over oil' shall mean, but shall not be
23 limited to, any person using, transferring, storing, or
24 transporting oil immediately prior to a discharge of such oil
25 onto the land or into the waters of the State, and specifically
26 shall include carriers and bailees of such oil.

27 (7) 'Land' shall mean only land from which it is reasonably
28 likely that oil will flow into the waters of this State.

2 (8) 'Oil' shall mean oil of any kind and in any form,
including, but specifically not limited to, petroleum, crude oil,
diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil
mixed with other waste, oil sludge, petroleum related products or
by-products, and all other liquid hydrocarbons, regardless of

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1 specific gravity, whether singly or in combination with other
2 substances.

3 (9) "Oil terminal facility" shall mean any facility of any
4 kind and related appurtenances located in, on or under the
5 surface of any land, or water, including submerged lands, which
6 is used or capable of being used for the purpose of transferring,
7 transporting, storing, processing, or refining oil; but shall not
8 include any facility having a storage capacity of less than 500
nor any retail gasoline dispensing operation serving the motoring public.
9 barrels. A vessel shall be considered an oil terminal facility
10 only in the event that it is utilized to transfer oil from
11 another vessel to an oil terminal facility; or to transfer oil
12 between one oil terminal facility and another oil terminal
13 facility; or is used to store oil.

14 (10) "Operator" shall mean any person owning or operating an
15 oil terminal facility or pipeline, whether by lease, contract, or
16 any other form of agreement.

17 (11) "Person" shall mean any and all natural persons, firms,
18 partnerships, associations, public or private institutions,
19 municipalities or political subdivisions, governmental agencies,
20 or private or public corporations organized or existing under the
21 laws of this State or any other state or country.

22 (12) "Pipeline" shall mean any conduit, pipe or system of
23 pipes, and any appurtenances related thereto and used in
24 conjunction therewith, used, or capable of being used, for
25 transporting or transferring oil to, from, or between oil
26 terminal facilities.

27 (13) "Restoration" or "restore" shall mean any activity or
28 project undertaken in the public interest or to protect public

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1 interest or to protect public property or to promote the public
2 health, safety or welfare for the purpose of restoring any lands
3 or waters affected by an oil discharge as nearly as is possible
4 or desirable to the condition which existed prior to the
5 discharge.

6 (14) 'Transfer' shall mean the transportation, on-loading or
7 off-loading of oil between or among two or more oil terminal
8 facilities; between or among oil terminal facilities and vessels;
9 and between or among two or more vessels.

10 (15) 'Vessel' shall include every description of watercraft or
11 other contrivance used, or capable of being used, as a means of
12 transportation on water, whether self-propelled or otherwise, and
13 shall include, but shall not be limited to, barges and tugs.

14 (16) 'Waters' shall mean any stream, river, creek, brook, run,
15 canal, swamp, lake, sound, tidal estuary, bay, reservoir,
16 waterway or any other body or accumulation of water, surface or
17 underground, public or private, natural or artificial, which is
18 contained within, flows through, or borders upon this State, or
19 any portion thereof, including those portions of the Atlantic
20 Ocean over which this State has jurisdiction.

21 "§ 143-474. Oil Pollution Control Program.--The Board shall
22 establish within the Office an Oil Pollution Control Program
23 for the administration of this Article. The Board may employ and
24 prescribe the duties of employees assigned to this activity.

25 "§ 143-475. Inspections and investigations; entry upon
26 property; records.--The Board, through its authorized
27 representatives, is empowered to conduct such inspections and
28 investigations as shall be necessary to determine compliance with

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1 the provisions of this Article; to determine the person or
2 persons responsible for violation of this Article; to determine
3 the nature and location of any oil discharged to the land or
4 waters of this State; and to enforce the provisions of this
5 Article. The authorized representatives of the Board are
6 empowered to enter upon any private or public property, including
7 boarding any vessel, for the purpose of inspection or
8 investigation or in order to conduct any project or activity to
9 contain, collect, disperse or remove oil discharges or to perform
10 any restoration necessitated by an oil discharge. Authorized
11 representatives of the Board shall have access to pertinent books
12 and records of any person when necessary to the conduct of any
13 investigation or inspection. Neither the State nor its agencies,
14 employees or agents shall be liable in trespass or damages
15 arising out of the conduct of any inspection, investigation, or
16 oil removal or restoration project or activity other than
17 liability for damage to property or injury to persons arising out
18 of the negligent or willful conduct of an employee or agent of
19 the State during the course of an inspection, investigation,
20 project or activity.

21 "§ 143-476. Confidential information.--Any information
22 relating to a secret process, device or method of manufacturing
23 or production discovered or obtained in the course of an
24 inspection, investigation, project or activity conducted pursuant
25 to this Article shall not be revealed except as may be required
26 by law or lawful order or process.

27 "§ 143-477. Authority supplemental.--The authority and powers
28 granted under this Article shall be in addition to, and not in

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1 derogation of, any authority or powers vested in the Board under
2 any other provision of law, except to the extent that such other
3 powers or authority may conflict directly with the powers and
4 authority granted under this Article; and the Board is empowered
5 to adopt such rules and regulations as are necessary to
6 administer and carry out the purposes of this Article.

7 "§ 143-478. Local ordinances.--Nothing in this Article shall
8 be construed to deny any county, municipality, sanitary district,
9 metropolitan sewerage district or other authorized local
10 governmental entity, by ordinance, regulation or law, from
11 exercising police powers with reference to the prevention and
12 control of oil discharges to sewers, ^{disposal systems,} streams or upon the land
13 within their jurisdiction; provided, however, that/ as to discharges to streams or upon land, only such
14 ordinances, regulations or special acts as are more stringent than
15 the provisions of this Article and any rule, regulation or order
16 of the Board adopted under the authority of this Article shall be
17 valid.

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19
20 "§ 143-479. Local responsibilities.--Municipalities, counties,
21 and other local governmental entities ^{are authorized to} adopt and enforce
22 local ordinances or regulations prohibiting and controlling the
23 discharge of oil, petroleum products or their by-products into
24 any stream, disposal system, or storm sewer system within their
25 jurisdiction, which discharges to the waters of the State or upon
26 any land in such manner as to permit its drainage into the waters
27 of the State.

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1 "§ 143-480. Orders not stayed.--No rule, regulation or order
2 of the Board made pursuant to this Article shall be stayed by an
3 appeal from any action taken by the Board pursuant to the
4 provision of this Article.

5 "Part 2.

6 "Oil Discharge Controls.

7 "§ 143-481. Discharges.--(a) Unlawful discharges. It shall
8 be unlawful, except as otherwise provided in this Part, for any
9 person to discharge/oil into or upon any waters, tidal flats,
10 beaches, or lands within this State, or into any sewer, surface
11 water drain or other waters that drain into the waters of this
12 State, regardless of the fault of
13 the person owning or having control over the oil, or regardless
14 of whether the discharge was the result of intentional or
15 negligent conduct, accident or other cause.

16 (b) Excepted discharges. This section shall not apply to
17 discharges of oil in the following circumstances:

18 (1) When the discharge was authorized by an existing
19 regulation of the Board.

20 (2) When the person having control over the oil can
21 prove that a discharge was caused by any of the
22 following:

23 a. An act of God.

24 b. An act of war or sabotage.

25 c. Negligence on the part of the United States
26 Government or the State of North Carolina or
27 its political subdivisions.

28 d. An act or omission of a third party, whether or
not negligent.

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1 (c) Permits. Any person who desires or proposes to discharge
2 oil onto the land or into the waters of this State shall first
3 make application for and secure the permit required by G.S. 143-
4 215.1. Application shall be made pursuant to the rules and
5 regulations adopted by the Board. Any permit granted pursuant to
6 this subsection may contain such terms and conditions as the
7 Board shall deem necessary and appropriate to conserve and
8 protect the land or waters of this State and the public interest
9 therein.

10 "§ 143-482. Removal of prohibited discharges.--(a) Person
11 discharging. Any person owning or having control over oil
12 discharged in violation of this
13 Article shall immediately undertake to collect and remove the
14 discharge and to restore the area affected by the discharge as
15 nearly as may be to the condition existing prior to the
16 discharge. If it is not feasible to collect and remove the
17 discharge, the person responsible shall take all practicable
18 actions to contain, treat and disperse the discharge; but no
19 chemicals or other dispersants or treatment materials which will
20 be detrimental to the environment or natural resources shall be
21 used for such purposes unless they shall have been previously
22 approved by the Board.

23 (b) Removal by Board. Notwithstanding the requirements of
24 subsection (a) of this section, the Board is authorized and
25 empowered to utilize any staff, equipment and materials under its
26 control or supplied by other cooperating State or local agencies
27 and to contract with any agent or contractor that it deems
28 appropriate to take such actions as are necessary to collect,

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1 investigate, perform surveillance over, remove, contain, treat or
2 disperse oil discharged onto the land or into the waters of the
3 State and to perform any necessary restoration. The Director
4 shall keep a record of all expenses incurred in carrying out any
5 project or activity authorized under this section, including
6 actual expenses incurred for services performed by the State's
7 personnel and for use of the State's equipment and material. The
8 authority granted by this subsection shall be limited to projects
9 and activities that are designed to protect the public interest
10 or public property, and shall be compatible with the National

11 Contingent Plan established pursuant to the Federal Water Quality
12 Improvement Act of 1970 (Public Law 91-224), as amended.

13 "§ 143-483. Required notice.--Every person owning or having
14 control over oil discharged in violation of the provisions of
15 this Article, upon notice that such discharge has occurred, shall
16 immediately notify the Office, or any of its agents or
17 employees, of the nature, location and time of the discharge and
18 of the measures which are being taken or are proposed to be taken
19 to contain and remove the discharge. The agent or employee of
20 the Office receiving the notification shall immediately
21 notify the Director or Assistant Director of the Board or such
22 member or members of the permanent staff of the Office as the
23 Director may designate.

24 "§ 143-484. Other State agencies.--(a) Cooperative effort.
25 The North Carolina State Highway Commission, the North Carolina
26 Department of Conservation and Development, the North Carolina
27 Wildlife Resources Commission, and any other agency of this State
28 shall cooperate with and lend assistance to the Board by
assigning to the Board upon its request personnel, equipment and
material to be utilized in any project or activity related to the

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1 containment, collection, dispersal or removal of oil discharged
2 upon the land or into the waters of this State.

3 (b) Planning. Subsequent to ratification of this Article and
4 prior to its effective date, designated representatives of the
5 Board, the State Highway Commission, the Department of
6 Conservation and Development and the Wildlife Resources
7 Commission and any other agency or agencies of the State which
8 the Board shall deem necessary and appropriate, shall confer and
9 establish plans and procedures for the assignment and utilization
10 of personnel, equipment and material to be used in carrying out
11 the purposes of this Part. Every State agency involved is
12 authorized to adopt such rules and regulations as shall be
13 necessary to effectuate the purposes of this section.

14 (c) Accounts. Every State agency participating in the
15 containment, collection, dispersal or removal of an oil discharge
16 or in restoration necessitated by such discharge, shall keep a
17 record of all expenses incurred in carrying out any such project
18 or activity including the actual services performed by the
19 agency's personnel and the use of the agency's equipment and
20 material. A copy of all records shall be delivered to the Board
21 upon completion of the project or activity.

22 "§ 143-485. Oil Pollution Protection Fund.--There is hereby
23 established under the control and direction of the Board an Oil
24 Pollution Protection Fund which shall be a non-lapsing, revolving
25 fund consisting of any monies appropriated for such purpose by
26 the General Assembly or that shall be available to it from any
27 other source. The monies shall be used to defray the expenses of
28 any project or program for the containment, collection, dispersal

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1 or removal of oil discharged to the land or waters of this State
2 or for restoration necessitated by the discharge. In addition to
3 any monies that shall be appropriated or otherwise made available
4 to it, the fund shall be maintained by fees, charges, penalties
5 or other monies paid to or recovered by or on behalf of the Board
6 under the provisions of this Part. In the event that the Fund is
7 inadequate to defray the cost and expenses of any project or
8 activity authorized by this section, necessary additional funds
9 shall be allocated from the Contingency and Emergency Fund. The
10 method of disbursing and accounting for funds allocated from the
11 Contingency and Emergency Fund under the provisions of this
12 section shall be in accordance with the standards and procedures
13 prescribed by the Director of the Budget, pursuant to the
14 Executive Budget Act. Any monies paid to or recovered by or on
15 behalf of the Board as fees, charges, penalties or other payments
16 as damages authorized by this Part shall be paid, first, to the
17 Oil Pollution Protection Fund in an amount equal to the sums
18 expended from the Fund for the project or activity, and any sums
19 in excess thereof shall be paid to the Contingency and Emergency
20 Fund up to the amount dispersed therefrom for conduct of the
21 project or activity. Any additional sums remaining shall be paid
22 to the Oil Pollution Protection Fund.

23 "§ 143-486. Payments to State agencies.--Upon completion of
24 any oil removal or restoration project or activity conducted
25 pursuant to the provisions of this Part, each agency of the State
26 that has participated by furnishing personnel, equipment or
27 material shall deliver to the Board a record of the expenses
28 incurred by the agency. The amount of incurred expenses shall be

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1 disbursed by the Director to each such agency from the Oil
2 Pollution Protection Fund. Upon completion of any oil removal or
3 restoration project or activity, the Director shall prepare a
4 statement of all expenses and costs of the project or activity
5 expended by the State and shall make demand for payment upon the
6 person owning or having control over the oil discharged to the
7 land or waters of the State, unless the Board shall determine
8 that the discharge occurred by reason of an act of God, an act of
9 war or sabotage, negligence on the part of the United States
10 Government or the State of North Carolina or its political
11 subdivisions, or an act or omission of a third party, whether or not,
12 ^{Any} person owning or having control of oil discharged to the land or
13 waters of the State in violation of the provisions of this Part
14 and any other person causing or contributing to the discharge of
15 oil shall be directly liable to the State for the necessary
16 expenses of oil cleanup projects and activities arising from such
17 discharge and the State shall have a cause of action to recover
18 from any or all such persons. If the person owning or having control
19 oil discharged shall fail or refuse to pay the sum expended by
20 the State, the Director shall refer the matter to the Attorney
21 General of North Carolina, who shall institute an action in the
22 name of the State in the Superior Court of Wake County, or in his
23 discretion, in the superior court of the county in which the
24 discharge occurred, to recover such cost and expenses.

25 "§ 143-487. Multiple liability for necessary expenses.--

26 Any person liable for costs of
27 cleanup of oil under this Part shall have a cause of action to
28 recover such costs in part or in whole from any other person
causing or contributing to the entry of oil into the waters of
the State, including any amount recoverable by the State as necessary
expenses.

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1 The total recovery by the State for damage to public resources pursuant to
2 G.S. § 143-488 and for the cost of oil cleanup, arising from any discharge,
3 shall not exceed the applicable limits prescribed by federal law with respect
4 to the United States government on account of any such discharge.

5 "§ 143-488. Liability for damage to public resources.--Any
6 person who violates any of the provisions of this Article, or any
7 order, rule or regulation of the Board adopted pursuant to this
8 Article, or fails to perform any duty imposed by this Article, or
9 violates an order or other determination of the Board made
10 pursuant to the provisions of this Article, including the
11 provisions of a discharge permit issued pursuant to G.S. 143-
12 215.1, and in the course thereof causes the death of, or injury
13 to, fish, animals, vegetation or other resources of the State or
14 otherwise causes a reduction in the quality of the waters of the
15 State below the standards set by the Board of Water and Air
16 Resources, shall be liable to pay the State damages in an amount
17 equal to the sum of money necessary to restock such waters,
18 replenish such resources, or otherwise restore the rivers,
19 streams, bays, tidal flats, beaches, estuaries or coastal waters
20 and public lands adjoining the seacoast to their condition prior
21 to the injury, as such condition is determined by the Board of
22 Water and Air Resources in conference with the Board of
23 Conservation and Development, the Wildlife Resources Commission,
24 and any other State agencies having an interest affected by such
25 violation. Such damages shall be recoverable in an action
26 brought by the Attorney General in the name of the State in the
27 Superior Court of Wake County or in the superior court of the
28 county in which the damage occurred, as he shall elect; provided,
that if damages occurred in more than one county, the Attorney
General may bring an action in any of the counties where the

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1 damages occurred. Any money so recovered by the Attorney General
2 shall be transferred by the Board to appropriate funds
3 administered by the State agencies affected by the violation for
4 use in such activities as food fish or shellfish management
5 programs, wildlife and waterfowl management programs, water
6 quality improvement programs and such other uses as may best
7 mitigate the damage incurred as a result of the violation. No
8 action shall be authorized under the provisions of this section
9 against any person operating in compliance with the conditions of
10 a waste discharge permit issued pursuant to G.S. 143-215.1 and
11 the provisions of this Part.

12 "§ 143-489. Penalties.--(a) Civil penalties. Any person who
13 intentionally or negligently discharges oil, or knowingly causes
14 or permits the discharge of oil in violation of this Part or
15 fails to report a discharge as required by G.S. 143-483, shall
16 incur, in addition to any other penalty provided by law, a
17 penalty in an amount not to exceed fifty thousand dollars
18 (\$50,000) for every such violation, the amount to be determined
19 by the Board after taking into consideration the gravity of the
20 violation, the previous record of the violator in complying or
21 failing to comply with the provisions of this Part as well as
22 G.S. 143-215.1, and such other considerations as the Board deems
23 appropriate. Every act or omission which causes, aids or abets
24 a violation of this section shall be considered a violation under
25 the provisions of this section and subject to the penalty herein
26 provided. The penalty herein provided for shall become due and
27 payable when the person incurring the penalty receives a notice
28 in writing from the Board describing the violation with

GENERAL ASSEMBLY OF NORTH CAROLINA

1 reasonable particularity and advising such person that the
2 penalty is due. The Board may, upon written application
3 therefor, received within 15 days, and when deemed in the best
4 interest of the State in carrying out the purposes of this
5 Article, remit or mitigate any penalty provided for in this
6 section or discontinue any action to recover the penalty upon
7 such terms as it, in its discretion, shall deem proper, and shall
8 have the authority to ascertain facts upon all such applications
9 in such manner and under such regulations as the Board may adopt.
10 If the amount of such penalty is not paid to the Department
11 within 15 days after receipt of notice, or if an application for
12 remission or mitigation has not been made within 15 days as
13 herein provided, and the amount provided in the order issued by
14 the Board subsequent to such application is not paid within 15
15 days of receipt thereof, the Attorney General, upon request of
16 the Board, shall bring an action in the name of the State in the
17 Superior Court of Wake County or of any other county wherein such
18 violator does business, to recover the amount specified in the
19 final order of the Board. In all such actions the procedures and
20 rules of evidence shall be the same as in an ordinary civil
21 action except as otherwise in this Article provided.

22 (b) Criminal penalties. Any person who intentionally or
23 knowingly or willfully discharges or causes or permits the
24 discharge of oil in violation of this Part shall be guilty of a
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26 misdemeanor punishable by imprisonment not to exceed six months
27 or by fine to be
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1 not more than fifty thousand dollars (\$50,000), or by both, in
2 the discretion of the court.

3 "§ 143-490. Lien on vessel.--Any vessel (other than one owned
4 or operated by the State of North Carolina or its political sub-
5 divisions or the United States Government) from which oil is
6 discharged in violation of this Part or any regulation prescribed
7 pursuant thereto, shall be liable for the pecuniary penalty and
8 costs of oil removal specified in this Part and such penalty and
9 costs shall constitute a lien on such vessel; provided, however,
10 that said lien shall not attach if a surety bond is posted with
11 the Board in an amount and with sureties acceptable to the
12 Board, or a cash deposit is made with the Board in an amount
13 acceptable to the Board. The Board may adopt regulations
14 providing for such conditions, limitations, and requirements
15 concerning the bond or deposit prescribed by this section as
16 the Board deems necessary.

17 "§ 143-491. Liability for damage caused.--Any person owning
18 or having control over oil which enters the waters of the State
19 in violation of this Part shall be strictly liable, without
20 regard to fault, for damages to persons or property, public or
21 private, caused by such entry, subject to the exceptions
22 enumerated in G. S. 143-48(b).

23 "§ 143-492. Joint and several liability.--In order to provide
24 maximum protection for the public interest, any actions brought
25 pursuant to G.S. §§143-486 through 143-489(a), §143-491 or any
26 other section of this Article, for recovery of cleanup costs or
27 for civil penalties or for damages, may be brought against any
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2 one or more of the persons owning or having control over the
3 oil or causing or contributing to the discharge of oil. All
4 said persons shall be jointly and severally liable, but ultimate
5 liability as between the parties may be determined by common law
6 principles.

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"Part 3.

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"Oil Terminal Facility Permits.

9 "§ 143-493. Operating permits required.--No person shall
10 initiate the operation of any new oil terminal, facilities for
11 the handling, storage or refining of oil after January 1, 1974,
12 nor shall any person continue the operation of any such existing
13 facilities for a period of more than 12 months after such date
14 unless such person shall have applied for and shall have
15 received from the Board an operating permit therefor and shall
16 have complied with such conditions, if any, as are prescribed
17 by such permit.

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18 "§ 143-494. Permit fees and procedures.--(a) Applications
19 for permits under this Part shall be in the form and shall
20 contain the information prescribed by the Board. Each applica-
21 tion shall be accompanied by a fee to be prescribed by the
22 Board, not in excess of two hundred dollars (\$200.00). All
23 permits issued under this Part shall expire on December 31 of
24 the year for which they are issued.

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2 (b) Permits may be renewed annually upon application to the
3 Board, accompanied by a fee for each permit in the same amount
4 as for an original permit, on or before the first day of
5 January of the calendar year for which the permit is issued.

6 (c) The amount of a permit fee shall be established and may be
7 revised from time to time by the Board after a public hearing,
8 with a view to producing sufficient revenue to provide for the
9 minimum expenses of carrying out the program provided for by this
10 Article, not to exceed \$100,000 per annum. Any excess revenues
11 above \$100,000 realized from such fees in any year shall revert
12 to the General Fund. The Board may prescribe different fees
13 for different categories of permits. The public hearing
14 required by this subsection shall be held pursuant to the
15 provisions of G.S. 143-215.13(c) concerning public hearings
16 under the Water Use Act, except that the notice of hearing need
17 be published only in one newspaper of general circulation in
18 the State.

19 (d) If an application for renewal permit is not filed on or
20 before January 1 of any year, a penalty of twenty-five percent
21 (25%) of the renewal fee shall be assessed and added to the fee,
22 and shall be paid by the applicant before the renewal permit is
23 issued, but such penalty shall not apply if the applicant
24 furnishes an affidavit that he has not actively operated the
25 facility subsequent to the expiration of his prior permit.

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2 (e) Every permit holder who changes his address or place of
3 business shall immediately notify the Board.

4 (f) The Board shall issue to each applicant that satisfies the
5 requirements of this Part a permit which entitles the applicant
6 to operate the oil terminal facilities described in the applica-
7 tion for the calendar year for which the permit is issued,
8 unless the permit is sooner revoked or suspended.

9 (g) The Board may suspend for not longer than 10 days, pending
10 inquiry, and, after opportunity for a hearing, the Board may
11 deny, suspend, revoke, or modify the provision of any permit
12 issued under this Part, if it finds that the applicant or
13 permittee or his employee has committed any of the following
14 acts, each of which is declared to be a violation of this Part:

15 (1) Violated any provision of this Article or of any
16 rule or regulation adopted by the Board or of any lawful
17 order of the Board;

18 (2) Failed to pay the original or renewal permit fee when
19 due and continued to operate the facility without paying
20 the permit fee or without a permit;

21 (3) Was guilty of gross negligence, incompetency or
22 misconduct in acting as an operator of a facility covered
23 by a permit;

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2 (4) Refused or neglected to keep and maintain the records
3 required by or pursuant to this Article, or to make reports
4 when and as required, or refusing to make these records
5 available for audit or inspection;

6 (5) Made false or fraudulent records, invoices, or reports;

7 (6) Used fraud or misrepresentation in making an applica-
8 tion for a permit or renewal of a permit;

9 (7) Refused or neglected to comply with any limitations
10 in or restrictions on a duly issued permit;

11 (8) Aided or abetted a person to evade the provisions
12 of this Article, or combined or conspired with such a
13 person to evade the provisions of this Article.

14 (h) Any permittee whose permit is revoked under the provisions
15 of this Article shall not be eligible to apply for a new permit
16 hereunder until such time has elapsed from the date of the
17 order revoking said permit as established by the Board (not to
18 exceed two years), or if an appeal is taken from said order or
19 revocation, not to exceed two years from the date of the order
20 or final judgment sustaining said revocation."

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1 "§ 143-495. Powers of the Board.--In order that it may carry
2 out the intent of this Part and provide for its proper
3 administration, the Board, in addition to any other powers
4 granted under the laws of this State, shall have the power:

5 (a) To adopt, modify and revoke rules and regulations
6 governing the design,^{location,}/construction, operation and maintenance of
7 oil terminal facilities and such rules and
8 regulations may include, but shall not be limited to, the
9 following matters:

10 (1) Requirements for submission of engineering reports,
11 plans and specifications for the location and
12 construction of oil terminal facilities.

13 (2) Establishment of operating and inspection
14 requirements for oil terminal facilities,
15 personnel and other matters relating to
16 the permittee operations under this Part.

17 (3) Establishment of procedures and methods of
18 reporting discharges and other occurrences
19 prohibited by this Article.

20 (4) Establishment of procedures, methods, means and
21 equipment to be used by persons, subject to
22 regulation by this Part.

23 (5) Establishment of procedures, methods, means, and
24 equipment to be used in the removal of oil
25 pollutants.

26 (6) Development and implementation of criteria and
27 plans to meet oil pollution occurrences of various
28 degrees and kinds.

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(7) Requirements for the safety and operation of vessels, motor vehicles, motorized equipment and other equipment relating to the use and operation of oil terminal facilities and the approach and departure from such facilities.

(8) Adoption of such other rules and regulations as the exigencies of any condition may require or such as may be necessary to carry out the intent of this Part.

(b) To grant permits for the operation of existing or proposed oil terminal facilities and to impose such terms and conditions therein as it shall deem necessary and appropriate;

(c) To grant temporary permits for the operation of existing oil terminal facilities for such periods of time as the Board may deem reasonable for full compliance with the provisions of this Part, but no such permit may be issued for a period exceeding 12 months;

(d) To require the installation of such facilities and the employment of such protective measures and operating procedures as are deemed necessary to prevent, insofar as possible, any oil discharges to the waters or lands of the State.

"§ 143-496. Penalties.--(a) Civil penalty. Any person who violates any provision of this Part, or any rule, regulation or order of the Board made pursuant to this Part, shall be subject to a civil penalty of not

more than ten thousand dollars (\$10,000) for each violation. When the Board shall determine that a violation has occurred, it shall set the amount of the penalty and shall give written notice

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1 to the person responsible for the violation and shall demand
2 payment. If the person responsible for the violation fails or
3 refuses to pay within 15 days after receipt of demand for
4 payment, the Board may refer the matter to the Attorney General
5 of North Carolina for the institution of an action in the name of
6 the State in the Superior Court of Wake County or in the superior
7 court of the county in which the violation occurred, as the
8 Attorney General shall elect. Any sums recovered under this
9 subsection shall be payable to the Oil Pollution Protection Fund.

10 (b) Any person who knowingly or willfully violates any
11 provision of this Part or any rule, regulation or order of the
12 Board made pursuant to this Part (other than a rule, regulation or
13 order that requires reporting^{of}/violations), shall be guilty of a
14 misdemeanor punishable by imprisonment not to exceed three months
15 or by fine not to exceed five thousand dollars (\$5,000), or by
16 both, in the discretion of the court. Any fines recovered under
17 this subsection shall be payable to the Oil Pollution Protection
18 Fund.

--(a) General severability clause.

19 "§ 143-497. Severability. / If any provision of this Article or
20 the application thereof to any person or circumstance is held
21 invalid, such invalidity shall not affect other provisions or
22 applications of the Article which can be given effect without the
23 invalid provision or application, and to this end the provisions
24 of this Article are declared to be severable.

25 (b) Special severability clause. Without limiting the effect of
26 subsection (a) of this section, the following provisions of this
27 Article are hereby specifically declared to be severable:

28 (i) This Article in its entirety is intended to be severable

GENERAL ASSEMBLY OF NORTH CAROLINA

1 from the general water pollution control laws of North Carolina
2 (G.S. Chapter 143, Article 21, Part 1 and related statutes).

3 (ii) The provisions of this Article, in their application to
4 inland waters and related lands, are intended to be severable
5 from those provisions in their application to coastal and
6 marine waters and related lands.

7 (iii) The various liability and penalty provisions of this
8 Article--including G.S. §§ 143-486, 143-487, 143-488, 143-489(a)
9 and 143-489(b), as well as the severable components of each of
10 said sections and subsections--are intended to be severable from
11 one another.

12 (iv) Part 3 of this Article is intended to be severable from
13 Part 2.

14 Sec. 2. This act shall be effective from and after September 1,
15 1973.

SECTION-BY-SECTION ANALYSIS OF PROPOSED

OIL POLLUTION CONTROL BILL

101

The bill adds a new Article 17 to Chapter 10 of the Revised Statutes of the State of New York, entitled "Oil Pollution Control". The bill would provide for the establishment of a State Oil Pollution Control Fund, and for the collection and distribution of funds to the several counties and cities of the State for the purpose of controlling and abating oil pollution. The bill also provides for the appointment of a State Oil Pollution Control Board, and for the appointment of a State Oil Pollution Control Fund Administrator.

The bill is effective immediately upon its passage.

The bill is recommended by the Committee on the Judiciary.

APPENDIX D

SECTION-BY-SECTION ANALYSIS OF PROPOSED

OIL POLLUTION CONTROL BILL

SECTION 1. Short title.

This act shall be known and may be cited as the "Oil Pollution Control Act".

SECTION 2. Purpose and scope.

The purpose of this act is to provide for the control and abatement of oil pollution.

SECTION 3. Definitions.

SECTION 4. State Oil Pollution Control Fund.

SECTION-BY-SECTION ANALYSIS OF PROPOSED

OIL POLLUTION CONTROL BILL

Introduction

This bill adds a new Article 53 to Chapter 143 of the General Statutes entitled "Oil Pollution Control." Supplementing existing controls over oil wells, the bill would provide the statutory basis for a comprehensive program of oil spill control and of regulation over the location, construction and operation of oil refineries, pipelines and oil terminals. The new Article 53 is subdivided into three Parts:

Part 1 (§§ 143-471 to 143-480)--General Provisions.

Part 2 (§§ 143-481 to 143-491)--Oil Discharge Controls (i.e., oil spill controls).

Part 3 (§§ 143-481 to 143-491)--Oil Terminal and Oil Pipeline Facility Permits.

Part 1. General Provisions

§ 143-471

This section entitles the new Article 53 as the "Oil Pollution Control Act of 1973."

§ 143-472

This section contains a simple statement of the purpose of the Act to protect the land and waters of the State against oil pollution. It expressly disclaims any intent to intrude upon federal jurisdiction.

§ 143-473

In defining the key terms used in the act, this section makes it clear that:

(1) The "oil" that comes under this act includes everything from petroleum, crude oil, gasoline, diesel oil and lubrication oil, to oil refuse and oil sludge--in short, all liquid hydrocarbons.

^{Harmful}
(2)/ Oil "discharges" covered by the oil spill control provisions include not only direct discharges to waters by pumping, leakage, spilling or otherwise, but also indirect discharges by drainage of oil placed in proximity to waters, e.g., on land from which it is reasonably likely that oil will flow into waters of the State.

(3) "Oil terminal facilities", for which permits are required by Part 3, include all refineries, oil storage facilities, and oil transport or processing facilities that have a capacity of 500 barrels or more, other than retail gasoline stations.

§ 143-474

This section directs the Board of Water and Air Resources (hereafter "the Board") to establish within the Office of Water and Air Resources an Oil Pollution Control Program.

§§ 143-475 and 143-476

These sections (1) provide the authority for inspections, investigations, and entries upon private property, and (2) protect confidential information thereby acquired from disclosure except as required by law.

§ 143-477

This section authorizes the Board to adopt implementing regulations and makes it plain that the Act is supplemental to other related laws (such as the water pollution control laws).

§§ 143-478 and 143-479

These sections empower and direct local governments to adopt/supplementary specified kinds of controls over oil discharges by ordinances.

§ 143-480

This section provides that orders and regulations of the Board shall not be stayed by appeals to the courts.

Part 2. Oil Discharge Controls

§ 143-481

This section states the basic prohibition against oil spills, or "discharges", in the language of the statute. It prohibits not only discharging oil directly but also causing oil to be discharged--into waters, beaches, or lands from which oil is likely to flow into waters, or into sewers or drains. The duty not to discharge is virtually absolute. Negligence or fault need not be proved; even accidental discharges are prohibited. The only valid defenses against a charge of illegal oil spilling are an act of God, an act of war or sabotage, negligence by the federal or state government, or an act or omission of a third party.

Subsection (c) provides a procedure for discharge of oil under permit from the Board, with such conditions as the Board may prescribe.

§ 143-482

This section establishes the procedures for control and removal of oil spills. Initially it places a duty upon the discharger to collect and remove the oil and restore the affected area. If collection and removal are not feasible, there is a duty to contain, treat and disperse in a manner that is not detrimental to the environment. The Board is authorized, with its own forces or by contract, to take necessary actions to control and clean up a spill. Provision for collection of the cost of such actions is in § 143-486.

§ 143-483

Under this section, persons responsible for an oil spill must immediately

notify the Office of Water and Air Resources of the incident and of the control measures underway or proposed.

§ 143-484

This section makes it the responsibility of the Highway Commission, the Wildlife Resources Commission and the Department of Conservation and Development to cooperate with the Board in spill control and cleanup activities, in developing plans and procedures, and in keeping records of their expenses in carrying out control and cleanup measures.

§ 143-485

A non-lapsing, revolving fund, the "Oil Pollution Protection Fund", is established by this section. Into this fund would go appropriated monies for oil pollution control, as well as all fees, charges, penalties and other monies recovered by the Board under the Oil Pollution Control Act. Out of this fund would be paid the expenses of control and cleanup programs. If the Fund proves inadequate to meet these expenses, additional expenditures are authorized from the Contingency and Emergency Fund.

§ 143-486

This section establishes the procedure for reimbursement from the Oil Pollution Protection Fund to state agencies for their expenses in conducting cleanup and restoration activities. It also establishes the procedure for the Board to follow in collecting the costs of cleanup and removal from the responsible parties, including if necessary the bringing of a lawsuit for this purpose.

§ 143-487

Under this section a person liable to the State for cleanup costs is given a cause of action to recover from other contributors their share of

the damage. Total recovery by the State is limited to the applicable limits under federal law for recovery of federal cleanup costs. (Currently these limits are \$8 million for a spill from onshore facilities and \$14 million for a spill from a vessel, but not over \$100 per gross ton of such vessel.)

§ 143-488

This section imposes upon the responsible parties liability for damage to public resources by oil spills and establishes a procedure, analogous to that under the present "Fishkill Law," for collecting the cost of repairing such damage from the culprit. It covers injuries to fish, animals, vegetation or other resources of the State, as well as reduction in water quality below established standards. Liability is imposed for sums necessary to restock the waters, replenish the resources, or otherwise restore the waters or lands to the status quo--a condition which is to be determined by the Board in conference with other interested State agencies. Sums recovered under this section are to be allocated to the responsible agencies for use in mitigating the damages. A holder of a valid water pollution control permit who is operating in compliance with his permit cannot be held liable under this section.

§ 143-489

Subsection (a) of this section prescribes civil penalties for oil spills and for failure to report a spill. The penalty may be as high as \$50,000 for any violation, and the amount is to be determined by the Board. A procedure is established for assessment and collection of these civil penalties.

Subsection (b) prescribes criminal penalties for oil spills, though not for failure to report violations. Intentional or knowing or willful spills

are declared to be misdemeanors, punishable by up to six months' imprisonment or \$50,000 fine, or both.

§ 143-490

This section subjects offending vessels to a lien for the costs of clean-up and civil penalties. The lien may be avoided, however, by posting an adequate bond, or cash deposit. The bond-or-deposit alternative is included so that vessels in transit can continue on their way after giving assurances of ability to respond to penalties and claims under the Act.

§ 143-491

This section expresses a rule of strict liability for damages to persons or property from oil spills, subject to the exceptions expressed in § 143-481, above (Act of God or third party, etc.).

§ 143-492

This section provides for joint and several liability in the various actions that may be brought under the statute, leaving ultimate liability between the parties to common law principles.

Part 3. Oil Terminal Facility Permits

§ 143-493

Under this section a permit from the Board is required to operate an oil terminal facility for handling, storage or refining of oil.

(See § 143-473 above for the definition of "oil terminal facilities".) The permit requirement applies to new facilities initiated after January 1, 1974, as well as to existing facilities continued in operation after January 1, 1975.

§ 143-494

This section spells out the detail framework for permit fees under Part 3 of the Act and for permit procedures.

§ 143-495

This section empowers the Board to adopt implementing regulations governing the design, location, construction and operation of oil terminal facilities and indicates by example the allowable scope of these regulations. It also expresses the authority of the Board to grant temporary and definitive permits, and to require facilities to be installed and protective measures taken to prevent oil spills.

§ 143-496

Subsection (a) of this section prescribes civil penalties for violations of this Part or of the Board's implementing rules, regulations or orders. The penalty may be as high as \$10,000 for any violation, and the amount is to be determined by the Board. A procedure is established for assessment and collection of these civil penalties.

Subsection (b) prescribes criminal penalties for violations, other than reporting violations. Knowing or willful violations are declared to be misdemeanors, punishable by up to three months' imprisonment or \$5,000 fine, or both.

§ 143-497

Subsection (a) of this section contains a standard general severability clause. Subsection (b) goes one step further by including a "special severability clause." This special severability clause gives the courts more explicit legislative directions than are usually provided by statute, in order to guard against the risks of invalidation of segments of this Act that can be identified in light of the test cases that have been brought against the oil spill control statutes of Florida and other states.

Bill Section 2

Bill section 2 makes the Act effective September 1, 1973 in order to allow ample time for preparation to be made for implementation of the Oil Pollution Control Act.